

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(131)

RSA No.2542 of 2022 (O&M)**Date of Decision: 15.09.2023**

Sangram Singh (deceased) through LRs.

.....Appellant

Versus

Munesh & Another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sachin Mittal, Advocate, and
Ms. Seemantika Jindal, Advocate for the appellants.

HARKESH MANUJA, J.(ORAL)

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 17.09.2015 and 14.09.2022 passed by the Courts below whereby a suit for possession by way of specific performance and also for permanent injunction filed at the instance of respondent No.1/plaintiff was decreed.

2. Briefly stating, the respondent No.1/plaintiff based on an agreement to sell dated 22.08.2007 pertaining to 4 Kanals 19 Marlas of land situated within the revenue estate of Village Harchandpur, Tehsil Sohna, District Gurgaon, filed a suit of possession by way of specific performance stating therein that the appellant/defendant No.1 being owner of the property in question, entered into the aforementioned agreement with respondent No.1/plaintiff @ Rs.12 Lakh per acre against which Rs. 2 Lakhs was paid as earnest money and 25.11.2009 was fixed as the target date. It was further pleaded that the appellant/defendant No.1 did not come forward for execution of the sale deed thereby compelling respondent No.1/plaintiff to file the present suit for specific performance of the aforementioned agreement to sell.

signatures over the alleged agreement to sell while stating that the same was result of forgery committed by respondent No.1/plaintiff in connivance with his brother namely Partap Singh who was inimical towards appellant-defendant. It was further pleaded that the land in question was sold by appellant/defendant No.1 in favour of respondent No.2/defendant No.2 on 23.01.2005 being a *bona fide* transaction.

4. Respondent No.2/defendant No.2 filed his separate written statement while taking a plea that he was a *bona fide* purchaser against valid sale consideration.

5. The trial Court vide judgment and decree dated 17.09.2015 decreed the suit filed at the instance of respondent No.1/plaintiff. Aggrieved thereof, the appellant/defendant No.1 filed first appeal, however, the same was dismissed by the Court of Additional District Judge, Gurgaon, vide judgment and decree dated 14.09.2022. It may be noticed here that, no separate appeal was filed at the instance of respondent No.2/defendant No.2 who claimed himself to be a *bona fide* purchaser of the land in question.

6. Impugning the aforementioned judgments and decrees passed by the Courts below, learned counsel for the appellant/defendant No.1 submits that the present is a clear cut case of forgery. He refers to the report made by the Handwriting Expert Ex.DW2/20, proved by him in the evidence while appearing as DW2 to contend that the signatures of appellant/defendant No.1 did not tally with his specimen signatures, thus, substantiated his plea/stand taken in the written statement. He also tried to take this Court to the signatures forming part of the photographs appended alongwith the report made by the Handwriting Expert DW2 as well as PW-4 i.e. the Handwriting Expert produced by respondent No.1/plaintiff so as to notice the difference in

noticeable with naked eyes.

7. I have heard learned counsel for the appellant and am unable to find substance in the submissions made on behalf of appellant.

8. In the present case, the execution of the agreement has been duly proved on record. The respondent No.1/plaintiff has examined one of the marginal witness namely Manish Kumar as PW-2; the Scribe Deepak Kumar Gupta as PW-3 ; Handwriting and Fingerprint Expert Parveen Pahuja as PW-4 and B. B. Gupta, Stamp Vendor as PW-5 and a concurrent finding of fact based on preponderance of evidence has been recorded by the Courts below regarding valid execution of the agreement in question dated 22.08.2007 as well as about his readiness and willingness.

9. The entire case of appellant/defendant No.1 as pleaded in the written statement about denial of his signatures on the agreement in question was based upon the allegations of forgery having been committed by respondent No.1/plaintiff in collusion with the brother of appellant/defendant No.1 namely Partap Singh. In this regard, from the cross-examination of DW-1 i.e. appellant/defendant No.1, it can be easily traced out that there was no dispute or difference between him and his brother Partap Singh as both have admittedly been litigating with third party jointly. The appellant/defendant No.1 has neither been able to establish on record any kind of difference or dispute between him and his brother Partap Singh. In the absence of any such evidence, the appellant-defendant No.1 has not been able to discharge his burden of proving forgery of agreement in question. Moreover, defendant No.2/respondent No.2 did not even appear as witness to establish his transaction with appellant-defendant No.1 to be *bona fide* which clearly shows that the entire story was cooked up just to get rid of the agreement in question

10. Lastly, no doubt, under Section 73 of the India Evidence Act, 1872, the Court on its own is competent to examine the signatures/thumb impressions of the parties to the litigation, however, the said exercise is to be carried out by the Court only in exceptional circumstances which are non existence in the present case especially when the First Appellate Court records that the appellant/defendant No.1 is in the habit of changing his signatures. In view of the fact that both the sides have produced their own separate Handwriting Experts, it may not be safe to analyze and compare the characteristics of the signatures of appellant-defendant No.1 on the basis of mere casual glance. Support can be drawn in this regard from the decision of the Hon'ble Apex Court, in case of **Thiruvengada Pillai vs. Navaneethammal & Anr., 2008 AIR Supreme Court, page 1541**. Relevant para No.15 thereof is reproduced hereunder:-

“15. While there is no doubt that court can compare the disputed handwriting/signature/finger impression with the admitted handwriting/ signature/finger impression, such comparison by court without the assistance of any expert, has always been considered to be hazardous and risky. When it is said that there is no bar to a court to compare the disputed finger impression with the admitted finger impression, it goes without saying that it can record an opinion or finding on such comparison, only after an analysis of the characteristics of the admitted finger impression and after verifying whether the same characteristics are found in the disputed finger impression. The comparison of the two thumb impressions cannot be casual or by a mere glance. Further, a finding in the judgment that there appeared to be no marked differences between the admitted thumb impression and disputed thumb impression, without anything more, cannot be accepted as a valid finding that the disputed signature is of the person who has put the admitted thumb impression. Where the Court finds that the disputed finger impression and admitted thumb impression are clear and where the court is in a position to identify the characteristics of finger prints, the court may

record a finding on comparison, even in the absence of an expert's opinion. But where the disputed thumb impression is smudgy, vague or very light, the court should not hazard a guess by a casual perusal. The decision in Muralilal (supra) and Lalit Popli (supra) should not be construed as laying a proposition that the court is bound to compare the disputed and admitted finger impressions and record a finding thereon, irrespective of the condition of the disputed finger impression. When there is a positive denial by the person who is said to have affixed his finger impression and where the finger impression in the disputed document is vague or smudgy or not clear, making it difficult for comparison, the court should hesitate to venture a decision based on its own comparison of the disputed and admitted finger impressions. Further even in cases where the court is constrained to take up such comparison, it should make a thorough study, if necessary with the assistance of counsel, to ascertain the characteristics, similarities and dissimilarities. Necessarily, the judgment should contain the reasons for any conclusion based on comparison of the thumb impression, if it chooses to record a finding thereon. The court should avoid reaching conclusions based on a mere casual or routine glance or perusal.”

No other argument has been raised.

11. In view of the discussion made hereinabove finding no merits in the present appeal as there being no illegality or perversity in the judgments passed by the Courts below, the same is hereby dismissed.
12. Pending applications, if any, stand disposed of.

(HARKESH MANUJA)
JUDGE

15.09.2023
anil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No